

and 1973. The aggregate of the 1971 disposition under subdivision (i)(A) of this subparagraph and the 1973 related disposition under subdivision (i)(B) of this subparagraph is \$35,000, which is more than 25 percent of the fair market value of M's net assets as of the beginning of 1971, the first year in which any disposition was made. Thus M has made a significant disposition of its assets and is subject to the provisions of section 6043(b) and this section for the year 1973.

(2) For the definition of the term "normally" as used in paragraph (b)(2) of this section, see § 1.6033-2(g)(3).

(3) For examples of the term "integrated auxiliaries" as used in paragraph (b)(1) of this section, see § 1.6033-2(g)(1)(i)(a).

[T.D. 7563, 43 FR 40221, Sept. 11, 1978]

§ 1.6043-4T Information returns relating to certain acquisitions of control and changes in capital structure (temporary).

(a) *Information returns for an acquisition of control or a substantial change in capital structure*—(1) *General rule.* If there is an acquisition of control (as defined in paragraph (c) of this section) or a substantial change in the capital structure (as defined in paragraph (d) of this section) of a domestic corporation ("reporting corporation"), the reporting corporation must file a completed form 8806 (or any successor form) in accordance with the instructions to that form. Form 8806 will request the information required in paragraphs (a)(1)(i) through (v) of this section.

(i) *Reporting corporation.* Provide the name, address, and taxpayer identification number (TIN) of the reporting corporation;

(ii) *Common parent, if any, of the reporting corporation.* If the reporting corporation was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group;

(iii) *Acquiring corporation.* Provide the name, address and TIN of any corporation that acquired control of the reporting corporation within the meaning of paragraph (c) of this section or combined with or received assets from the reporting corporation pursuant to

a substantial change in capital structure within the meaning of paragraph (d) of this section ("acquiring corporation"). State whether the acquiring corporation is foreign (as defined in section 7701(a)(5)) or is a dual resident corporation (as defined in § 1.1503-2(c)(2)). In either case, state whether the acquiring corporation was newly formed prior to its involvement in the transaction.

(iv) *Common parent, if any, of acquiring corporation.* If the acquiring corporation named in paragraph (a)(1)(iii) of this section was a subsidiary member of an affiliated group filing a consolidated return immediately prior to the acquisition of control or the substantial change in capital structure, provide the name, address, and TIN of the common parent of that affiliated group.

(v) *Information about acquisition of control or substantial change in capital structure.* Provide—

(A) A description of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure of the corporation;

(B) The date or dates of the transaction or transactions that gave rise to the acquisition of control or the substantial change in capital structure;

(C) A description of and a statement of the fair market value of any stock provided to the reporting corporation's shareholders in exchange for their stock if the reporting corporation reasonably determines that the shareholders are not required to recognize gain (if any) from the receipt of such stock for U.S. Federal income tax purposes; and

(D) A statement of the aggregate amount of cash plus the fair market value of any property (including stock if the reporting corporation reasonably determines that its shareholders would be required to recognize gain (if any) on the receipt of such stock, but excluding stock described in paragraph (a)(1)(v)(C) of this section) provided to the reporting corporation's shareholders in exchange for their stock.

(2) *Time for making return.* Form 8806 (or an interim statement, as set forth in paragraph (a)(3) of this section)

must be attached to the reporting corporation's timely filed income tax return (taking extensions into account) for the year in which the acquisition of control or substantial change in capital structure occurs.

(3) *Interim statement.* If form 8806 has not been made available at least 90 days before the due date (including extensions) of the reporting corporation's income tax return for the year in which the acquisition of control or substantial change in capital structure occurs or at least 90 days before such return is timely filed (whichever is sooner), the reporting corporation shall attach a statement to its return containing the information described in paragraphs (a)(1)(i) through (v) of this section.

(4) *Coordination with other sections.* (i) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be filed pursuant to §§ 1.351-3(b), 1.355-5(a), or 1.368-3(a), provided the transaction is properly reported in accordance with those sections.

(ii) No reporting is required under paragraph (a) of this section with respect to a transaction for which information is required to be reported pursuant to section 6043(a), provided the transaction is properly reported in accordance with that section.

(5) *Exception where shareholders are exempt recipients.* No reporting is required under paragraph (a) of this section if the reporting corporation reasonably determines that all of its shareholders who receive cash, stock, or other property pursuant to the acquisition of control or substantial change in capital structure are exempt recipients under paragraph (b)(6) of this section.

(b) *Information returns regarding shareholders—(1) General rule.* A corporation that is required to file form 8806 pursuant to paragraph (a)(1) of this section (or an interim statement under paragraph (a)(3) of this section) shall file a return of information on forms 1096 and 1099-CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to

the acquisition of control or the substantial change in capital structure.

(2) *Additional requirement for information returns.* A corporation that would have been required to file form 8806 pursuant to paragraph (a) of this section (or an interim statement under paragraph (a)(3) of this section) but for the application of paragraph (a)(4)(i) of this section (relating to information provided under §§ 1.351-3(b), 1.355-5(a), or 1.368-3(a)) shall file a return of information on forms 1096 and 1099-CAP with respect to each shareholder of record in the corporation (before or after the acquisition of control or the substantial change in capital structure) who receives cash, stock, or other property pursuant to the acquisition of control or the substantial change in capital structure.

(3) *Time for making information returns.* Forms 1096 and 1099-CAP must be filed on or before February 28 (March 31 if filed electronically) of the year following the calendar year in which the acquisition of control or the substantial change in capital structure occurs.

(4) *Contents of return.* A separate form 1099-CAP must be filed with respect to amounts received by each shareholder (who is not an exempt recipient as defined in paragraph (b)(6) of this section) showing—

(i) The name, address, telephone number and TIN of the reporting corporation;

(ii) The name, address and TIN of the shareholder;

(iii) The number and class of shares in the reporting corporation exchanged by the shareholder;

(iv) The amount of cash and the fair market value of any stock (other than stock described in paragraph (a)(1)(v)(C)) of this section or other property provided to the shareholder in exchange for its stock; and

(v) Such other information as may be required by the instructions to form 1099-CAP.

(5) *Furnishing of forms to shareholders.* The form 1099-CAP filed with respect to each shareholder must be furnished to such shareholder on or before January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property as part of the acquisition of control or the

substantial change in capital structure.

(6) *Exempt recipients.* A corporation is not required to file a form 1099-CAP pursuant to this paragraph (b) of this section with respect to the following shareholders:

(i) Any shareholder who receives solely stock described in paragraph (a)(1)(v)(C) of this section in exchange for its stock in the corporation.

(ii) Any shareholder who is required to recognize gain (if any) as a result of the receipt of cash, stock, or other property if the corporation reasonably determines that the amount of such cash plus the fair market value of such stock and other property does not exceed \$1,000. Stock described in paragraph (a)(1)(v)(C) of this section is not taken into account for purposes of this paragraph (b)(6)(ii).

(iii) Any shareholder described in paragraphs (b)(6)(iii)(A) through (K) of this section if the corporation has actual knowledge that the shareholder is described in one of paragraphs (b)(6)(iii)(A) through (K) of this section or if the corporation has a properly completed exemption certificate from the shareholder (as provided in § 31.3406(h)-3 of this chapter). The corporation also may treat a shareholder as described in paragraphs (b)(6)(iii)(A) through (J) of this section based on the applicable indicators described in § 1.6049-4(c)(1)(ii).

(A) A tax-exempt organization, as described in § 1.6049-4(c)(1)(ii)(B)(1).

(B) An individual retirement plan, as described in § 1.6049-4(c)(1)(ii)(C).

(C) The United States, as described in § 1.6049-4(c)(1)(ii)(D).

(D) A state, as described in § 1.6049-4(c)(1)(ii)(E).

(E) A foreign government, as described in § 1.6049-4(c)(1)(ii)(F).

(F) An international organization, as described in § 1.6049-4(c)(1)(ii)(G).

(G) A foreign central bank of issue, as described in § 1.6049-4(c)(1)(ii)(H).

(H) A real estate investment trust, as described in § 1.6049-4(c)(1)(ii)(J).

(I) An entity registered under the Investment Company Act of 1940, as described in § 1.6049-4(c)(1)(ii)(K).

(J) A common trust fund, as described in § 1.6049-4(c)(1)(ii)(L).

(K) A corporation, as defined in section 7701(a)(3) (except for corporations for which an election under section 1362(a) is in effect), if the reporting corporation reasonably determines that such corporation is not a broker (as defined in § 1.6045-1(a)(1)) or a record holder for the actual owner of the stock.

(iv) Any shareholder that the corporation, prior to the transaction, associates with documentation upon which the corporation may rely in order to treat payments to the shareholder as made to a foreign beneficial owner in accordance with § 1.1441-1(e)(1)(ii) or as made to a foreign payee in accordance with § 1.6049-5(d)(1) or presumed to be made to a foreign payee under § 1.6049-5(d)(2) or (3). For purposes of this paragraph (b)(6)(iv), the provisions in § 1.6049-5(c) (regarding rules applicable to documentation of foreign status and definition of U.S. payor and non-U.S. payor) shall apply. The provisions of § 1.1441-1 shall apply by substituting the terms “corporation” and “shareholder” for the terms “withholding agent” and “payee” and without regard to the fact that the provisions apply only to amounts subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of § 1.6049-5(d) shall apply by substituting the terms “corporation” and “shareholder” for the terms “payor” and “payee”. Nothing in this paragraph (b)(6)(iv) shall be construed to relieve a corporation of its withholding obligations under section 1441.

(v) Any shareholder if, on January 31 of the year following the calendar year in which the shareholder receives cash, stock, or other property, the corporation did not know and did not have reason to know that the shareholder received such cash, stock, or other property in a transaction or series of related transactions that would result in an acquisition of control or a substantial change in capital structure.

(7) *Coordination with other sections.* No reporting is required under paragraph (b) of this section with respect to amounts that are required to be reported under section 6042 or section 6045, unless the corporation knows or has reason to know that such amounts are not properly reported in accordance with those sections.

(c) *Acquisition of control of a corporation*—(1) *In general.* For purposes of this section, an acquisition of control of a corporation (“first corporation”) occurs if, in a transaction or series of related transactions, either—

(i) Stock representing control of the first corporation is distributed by a second corporation to shareholders of the second corporation and the fair market value of such stock on the date of distribution is \$100,000,000 or more; or

(ii)(A) Before an acquisition of stock of the first corporation (directly or indirectly) by a second corporation, the second corporation does not have control of the first corporation;

(B) After the acquisition, the second corporation has control of the first corporation;

(C) The fair market value of the stock acquired in the transaction and in any related transactions as of the date or dates on which such stock was acquired is \$100,000,000 or more; and

(D) The shareholders of the first corporation (determined without applying the constructive ownership rule of section 318(a)) receive cash, stock, or other property pursuant to the acquisition.

(2) *Control.* For purposes of this section, control is determined in accordance with the first sentence of section 304(c)(1).

(3) *Constructive ownership.* (i) Except as otherwise provided in this section, the constructive ownership rules of section 318(a) (except for section 318(a)(4), providing for constructive ownership through an option to acquire stock), modified as provided in section 304(c)(3)(B), shall apply for determining whether there has been an acquisition of control.

(ii) The determination of whether there has been an acquisition of control shall be made without regard to whether the person or persons from whom control was acquired retain indirect control of the first corporation under section 318(a).

(iii) For purposes of paragraph (c)(1)(ii) of this section, section 318(a) shall not apply to cause a second corporation to be treated as owning, before an acquisition of stock in a first corporation (directly or indirectly) by

the second corporation, any stock that is acquired in the first corporation. For example, if the shareholders of a domestic corporation form a new holding company and then transfer their shares in the domestic corporation to the new holding company, the new holding company shall not be treated as having control of the domestic corporation before the acquisition. The new holding company acquires control of the domestic corporation as a result of the transfer. Similarly, if the shareholders of a domestic parent corporation transfer their shares in the parent corporation to a subsidiary of the parent in exchange for shares in the subsidiary, the subsidiary shall not be treated as having control of the parent before the transaction. The subsidiary acquires control of the parent as a result of the transfer.

(4) *Corporation includes group.* For purposes of this paragraph (c), if two or more corporations act pursuant to a plan or arrangement with respect to acquisitions of stock, such corporations will be treated as one corporation for purposes of this section. Whether two or more corporations act pursuant to a plan or arrangement depends on the facts and circumstances.

(5) *Section 338 election.* For purposes of this paragraph (c), an acquisition of stock of a corporation with respect to which an election under section 338 is made is treated as an acquisition of stock (and not as an acquisition of the assets of such corporation).

(d) *Substantial change in capital structure of a corporation*—(1) *In general.* A corporation has a substantial change in capital structure if it has a change in capital structure (as defined in paragraph (d)(2) of this section) and the amount of any cash and the fair market value of any property (including stock) provided to the shareholders of such corporation pursuant to the change in capital structure, as of the date or dates on which the cash or other property is provided, is \$100,000,000 or more.

(2) *Change in capital structure.* For purposes of this section, a corporation has a change in capital structure if the corporation in a transaction or series of transactions—

(i) Undergoes a recapitalization with respect to its stock;

(ii) Redeems its stock (including deemed redemptions);

(iii) Merges, consolidates or otherwise combines with another corporation or transfers all or substantially all of its assets to one or more corporations;

(iv) Transfers all or part of its assets to another corporation in a title 11 or similar case and, in pursuance of the plan, distributes stock or securities of that corporation; or

(v) Changes its identity, form or place of organization.

(e) *Reporting by successor entity.* If a corporation ("transferor") transfers all or substantially all of its assets to another entity ("transferee") in a transaction that constitutes a substantial change in the capital structure of transferor, transferor must satisfy the reporting obligations in paragraph (a) or (b) of this section. If transferor does not satisfy the reporting obligations in paragraph (a) or (b) of this section, then transferee must satisfy those reporting obligations. If neither transferor nor transferee satisfies the reporting obligations in paragraphs (a) and (b) of this section, then transferor and transferee shall be jointly and severally liable for any applicable penalties (see paragraph (g) of this section).

(f) *Receipt of property.* For purposes of this section, a shareholder is treated as receiving property (or as having property provided to it) pursuant to an acquisition of control or a substantial change in capital structure if a liability of the shareholder is assumed in the transaction and, as a result of the transaction, an amount is realized by the shareholder from the sale or exchange of stock.

(g) *Penalties for failure to file.* For penalties for failure to file as required under this section, see section 6652(l). The information returns required to be filed under paragraphs (a) and (b) of this section shall be treated as one return for purposes of section 6652(l) and, accordingly, the penalty shall not exceed \$500 for each day the failure continues (up to a maximum of \$100,000) with respect to any acquisition of control or any substantial change in cap-

ital structure. Failure to file as required under this section also includes the requirement to file on magnetic media as required by section 6011(e) and § 1.6011-2. In addition, criminal penalties under sections 7203, 7206 and 7207 may apply in appropriate cases.

(h) *Examples.* The following examples illustrate the application of the rules of this section. For purposes of these examples, assume the transaction is not reported under §§ 1.351-3(b), 1.355-5(a), 1.368-3(a), and sections 6042, 6043(a) or 6045, unless otherwise specified, and assume that the fair market value of the consideration provided to the shareholders exceeds \$100,000,000.

Example 1. The shareholders of X, a domestic corporation and parent of an affiliated group, exchange their X stock for stock in Y, a newly-formed foreign holding corporation. After the transaction, Y owns all the outstanding X stock. The X shareholders must recognize gain (if any) on the exchange of their stock as a result of the application of section 367(a). Because the transaction results in an acquisition of control of X, X must comply with the rules in paragraphs (a) and (b) of this section. If a statement is filed in accordance with § 1.351-3(b) with respect to the transaction, X is not required to attach form 8806 (or an interim statement) to its return. Regardless of whether a statement is filed in accordance with § 1.351-3(b), X must file a form 1099-CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the Y stock received by that shareholder, and X must furnish a copy of the form 1099-CAP to that shareholder.

Example 2. C, a domestic corporation and parent of an affiliated group merges into D, an unrelated domestic corporation. Pursuant to the transaction, the C shareholders exchange their C stock for D stock or for a combination of short term notes and D stock. The transaction does not satisfy the requirements of section 368, and the C shareholders must recognize gain (if any) on the exchange. Because the transaction results in a substantial change in the capital structure of C, C (or D as the successor to C) must comply with the rules in paragraphs (a) and (b) of this section. C must attach form 8806 (or an interim statement) to its final income tax return. C (or D as the successor to C) also must file a form 1099-CAP with respect to each shareholder who is not an exempt recipient showing the fair market value of the short term notes (if any) and the fair market value of the D stock provided to that shareholder, and C (or D) must furnish a copy of the form 1099-CAP to that shareholder.

Example 3. (i) The facts are the same as in example (2), except that C reasonably determines that—

(A) The transaction satisfies the requirements of section 368;

(B) The C shareholders who exchange their C stock solely for D stock will not be required to recognize gain (if any) on the exchange; and

(C) The C shareholders who exchange their C stock for a combination of short term notes and D stock will be required to recognize gain (if any) on the exchange solely with respect to the receipt of the short term notes.

(ii) If a statement is filed in accordance with § 1.368-3(a) with respect to the transaction, C is not required to attach form 8806 (or an interim statement) to its return under paragraph (a) of this section. Regardless of whether a statement is filed in accordance with § 1.368-3(a), C (or D as the successor to C) must comply with the rules in paragraph (b) of this section. With respect to each shareholder who receives a combination of short term notes and D stock, and who is not an exempt recipient, C or D must file a form 1099-CAP showing the fair market value of the short term notes provided to the shareholder, and C (or D) must furnish a copy of the form 1099-CAP to that shareholder. The form 1099-CAP should not show the fair market value of the D stock provided to the shareholder. C and D are not required to file and furnish forms 1099-CAP with respect to shareholders who receive only D stock in exchange for their C stock.

Example 4. The facts are the same as in example 3, except the C shareholders receive cash instead of short term notes. The C shareholders exchange their shares through a transfer agent. Under section 6045, the transfer agent is required to report the amount of cash paid to the C shareholders in the transaction. C and D are not required to file information returns under paragraph (b) of this section, unless C or D knows or has reason to know that the transfer agent did not file the required information returns under section 6045.

(i) *Effective date.* This section applies to any acquisition of control and any substantial change in capital structure occurring after December 31, 2001, if the reporting corporation or any shareholder is required to recognize gain (if any) as a result of the application of section 367(a) as a result of the transaction. If a reporting corporation described in the preceding sentence files its income tax return for the year in which the acquisition of control or the substantial change in capital structure occurs on or before January 13, 2003,

such reporting corporation (or successor entity) shall file an interim statement (as described in paragraph (a)(3) of this section) on or before January 31, 2003. The applicability of this section expires on November 14, 2005.

[T.D. 9022, 67 FR 69469, Nov. 18, 2002; 68 FR 6081, Feb. 6, 2003]

§ 1.6044-1 Returns of information as to patronage dividends with respect to patronage occurring in taxable years beginning before 1963.

(a) *Requirement*—(1) *In general.* Except as provided in subparagraph (2) of this paragraph, any corporation allocating to any patron in respect of patronage occurring in any taxable year of the corporation beginning before January 1, 1963, amounts aggregating \$100 or more during a calendar year as patronage dividends, rebates, or refunds (whether in cash, merchandise, capital stock, revolving fund certificates, retain certificates, letters of advice, or in some other manner that discloses to each patron the amount of such dividend, rebate, or refund) shall for each such calendar year file a return of information with respect to such allocation on Forms 1096 and 1099. A separate Form 1099 shall be prepared for each patron showing the name and address of the patron to whom such allocation is made, and the amount of the allocation. The allocation shall be reported for the calendar year during which the allocation is made, regardless of whether the allocation is deemed for the purpose of section 522 to be made at the close of a preceding taxable year of the corporation.

(2) *Exception.* A return is not required under this section in the case of any corporation (including any cooperative or nonprofit corporation engaged in rural electrification) described in section 501(c) (12) or (15) which is exempt from tax under section 501(a), or in the case of any corporation subject to a tax imposed by subchapter L, chapter 1, of the Code.

(b) *Time and place for filing.* Returns made under this section on Forms 1096 and 1099 for any calendar year shall be filed on or before February 28 of the following year with any of the Internal Revenue Service Centers, the addresses